

EMPIRE ELECTRIC ASSOCIATION, INC.  
MINUTES OF THE REGULAR MEETING  
OF THE BOARD OF DIRECTORS

November 19, 2010

Regular meeting of the board of directors of Empire Electric Association, Inc. was held Friday, November 19, 2010 with the following directors present: Bill Bauer, David Sitton, Jerry Fetterman, Jim Lawrence, Sue McWilliams, Bill Mollenkopf, and John Porter. Others present: General Manager Neal Stephens, Attorney Barry Spear, Executive Secretary Denise Rosenbaugh, and Member Services Manager Doug Sparks.

President Bauer called the meeting to order at 8:30 a.m.

**Approve Consent Agenda:**

President Bauer called for approval of the consent agenda items. Motion by McWilliams to approve the consent agenda as presented. Motion seconded by Fetterman and carried.

Mike Williams, Director of Safety Training & Loss Control with the Colorado Rural Electric Association, provided training on hazardous recognition. Mr. Williams left the meeting at 9:30 a.m.

Slim McWilliams and Chuck Forth attended the board meeting to request funding for Ute Mountain Roundup. They asked that Empire increase their level of sponsorship to a "Gold buckle sponsorship" in the amount of \$2500 per year. They left the meeting at 10:00 a.m.

**Correspondence:**

Thank you letters from:

- Southwest Open High School for Empire's support of their Minds & motion program
- Ute Mountain High Rodeo team
- Marci Cummins for the "car emergency gift" for her farewell basket from the Cortez Chamber
- Empire's support of Relay for Life
- Keesee & Triad for supporting Lou Gehrig disease golf tournament
- Donation to Mancos Valley Chorus
- Annual membership to Workers Compensation

Discussion was held regarding an article in the Dove Creek Press stating that the San Juan Bio Energy plant is for sale.

Invitation to Community Connections "thank you" party on December 2<sup>nd</sup> in Durango.

Donation Requests:

Manager Stephens reported that there is a donation request in the written packet from the NRECA International Foundation. Consensus of the board to not donate. Stephens reminded the board that Empire recently donated a large amount of used meters for their foundation. The meters were left over from the recent conversions to meters that provide two-way communication.

**Action Item:** The Ute Mountain Roundup donation request was revisited. Motion by Lawrence to donate the gold buckle level of \$2500. Motion seconded by Porter and carried with McWilliams abstaining. Since a sign at the fairgrounds is included at this level, the donation will be split between the advertising and economic development budgets.

### ***Policy Action/Review***

New Policy 12 (Director Election and Voting): Extensive discussion was held regarding incorporating language from the current policies 12 and 20 to conform to HB 1098. New Policy 12 will be amended as directed and brought back to the board next month. Attorney Spear informed the board that HB 1098 will require changes to the bylaws because they are no longer consistent with the law. Spear said that other Colorado co-ops have bylaw provisions that say the board can amend the bylaws at any time rather than taking them to the membership for voting. Spear does not recommend that the bylaws be changed to provide this option, but he does recommend that if this board wants to amend the bylaws to comport with state law, it would be a good idea to add a provision that will permit the board of directors to amend the bylaws to make them consistent with the law but continue the current process that requires the membership to vote on all other proposed amendments.

Spear also mentioned that under the HB 1098 statute, there are number of requirements that were put in to place that are not in the New Policy 12 since it only addresses elections and voting. Other aspects of the bill are that members of the cooperative will be given an opportunity to address the board at any meeting, written minutes must be posted, board members vote can be noted if that member requests, and all board members shall make available some means for direct contact from members. Discussion followed regarding whether the board felt like another policy needed to be drafted to address the other aspects of HB 1098. Consensus of the board that Empire will comply with the law and that we already comply with or have immediate plans to fully comply with HB 1098. Policy 51 (Information Disclosure) will be reviewed to see if it requires an amendment to comply with HB 1098.

**Action Item:** Because President Bauer needed to leave the board meeting, motion by McWilliams to go into executive session to discuss confidential matters relating to Fast Track and Tri-State. Motion seconded by Sitton and carried. The board went into executive session at 11:28. The board came out of executive session at 11:45 a.m.

President Bauer left the meeting and Vice President Sitton assumed the chair.

Policy 39 (Affirmative Action): This has been reviewed by Mountain States Employers Council and will be brought back next month for approval.

Policy 55 (Position on Renewable Energy): Stephens said that this was his first draft of this policy relating to what he thought the board wanted after the renewable energy workshop. He passed around a proposed draft of a member packet that would be the “meat” of the policy. After discussion, the board liked the packet concept and several asked if a policy was still necessary. Stephens thought the board wanted a policy for staff direction. After discussion, Stephens will incorporate suggested changes and email the revised policy and the member packet for continuing discussion at next month’s board meeting.

Sample Rate Policy from NRECA/CFC: Manager Stephens reported that the sample policy was introduced to himself and directors Mollenkopf, Lawrence, and McWilliams at the Rate Strategies Class in October. Manager Stephens believes that this policy is similar with Empire’s current rate design

practices and would assist staff in developing future cost of service studies. The intention of a policy like this is for formal direction from the board rather than list rate design objectives separately in the resolutions adopting rate changes. The board directed Manager Stephens to propose a formal policy for review at next months board meeting. Stephens would like to have this decided in the first quarter of 2011, if possible.

## **Reports:**

### General Manager:

Manager Stephens directed everyone to the resolution in the packet regarding the final RUS documents on the latest loan. After discussion, motion by Fetterman to approve resolution 13-2010 following, pending legal review:

### **RESOLUTION 13-2010**

1. RESOLVED that the Corporation borrow from the Federal Financing Bank ("FFB") an amount not to exceed \$42,174,000.00, to be guaranteed by the United States of America (the "Government"), acting through the Administrator of the Rural Utilities Service ("RUS"); and
2. RESOLVED that the corporation accept the terms and conditions which the Administrator of RUS has established for obtaining its guarantee of the FFB loan, as such terms and conditions are set forth; and
3. RESOLVED that the President is authorized on behalf of the Corporation to execute and deliver under its corporate seal, which the secretary is directed to affix and attest:
  - (a) as many counterparts respectively as shall be deemed advisable of an agreement with the Government, in the form of the RUS Loan Contract submitted to this meeting; and
  - (b) a note payable to FFB and guaranteed by RUS in the principal amount of \$42,174,000.00, substantially in the form of the FFB note submitted to this meeting; and
  - (c) as many counterparts as shall be deemed advisable of a Supplemental Mortgage by and among the Corporation, the Government and National Rural Utilities Cooperative Finance Corporation, which, among other things, pledges all of the Corporation's property to secure notes payable to the Government in the aggregate principal amount not to exceed \$100,000,000.00 at any one time, and a financing statement, substantially in the form of the security instruments presented to this meeting; and
4. RESOLVED that the officers of the Corporation be, and each of them is authorized in the name and on behalf of the Corporation, to execute all such instruments, make all such payments and do all such other acts as in the opinion of the officer or officers acting may be necessary or appropriate in order to carry out the purposes and intent of the foregoing resolutions; and
5. RESOLVED, that the General Manager and/or Accounting Manager, and any officials authorized to act in such corporate positions(s) and to perform the functions of such positions are authorized on behalf of the Borrower (a) to execute and deliver from time to time advance requests, maturity extension election notices, prepayment election notices and refinancing election notices, in the form of such instruments attached to the note

payable to FFB, and (b) to specify information and select options as provided in such instruments.

**Secretary certifies** that each member of the board of directors of the Corporation was furnished with notice of said meeting in compliance with the bylaws of the Corporation.

**Secretary further certifies that** the actual execution of the documents referred to above was authorized at the November 19, 2010, meeting of the Corporation's board of directors.

**And Secretary further certifies that** the following are the names and signatures, respectively, of the officers of the Corporation identified below who validly held and occupied their respective positions on said date of actual execution of the documents.

<u>Office</u>	<u>Name</u>
President	William C. Bauer
Vice President	David W. Sitton
Secretary/Treasurer	James W. Lawrence
General Manager	Neal E. Stephens
Accounting Mgr	Mary Thiesing

Motion seconded by McWilliams and carried.

**Action Item:** Accounting Manager Thiesing joined the meeting by telephone to discuss the Agreement with CFC and US Bank to establish a corporate credit card program. Several advantages of this would be that Empire could automatically draft payments the same day every month, can track expenses and manage accounts and she hopes to partner with our software provider to be able to get on line and fill in account numbers. She suggests piloting the program with a couple of staff cards and fleet. We can limit where cards can be used and there is no annual fee. With the First National Visa cards we currently use, we build up points to buy gifts for door prizes, etc. but with the CFC card, we get cash back instead of items. Per staff recommendation, motion by Mollenkopf to approve Resolution 12 -2010 as follows:

#### **RESOLUTION 12-2010**

**RESOLVED**, that Empire Electric Association, Inc. (the "Cooperative") establish a corporate credit card program under the terms, conditions and provisions of the National Rural Utilities Cooperative Finance Corporation ("CFC") – U.S. BANK VISA Corporate Card and One Card Program Charge Card Reimbursement Agreement (the "Agreement"), and to reimburse CFC, together with interest, for any amounts that CFC is required to pay U.S. BANK on behalf of the Cooperative pursuant to the terms of the Agreement; and,

**RESOLVED**, that the Accounting Manager and Assistant Accounting Manager of the Cooperative be and is hereby authorized to execute the Agreement on behalf of the Cooperative, to execute any future amendments to said Agreement as such individual may deem appropriate, and to execute such further documents as may be necessary or appropriate in order to comply with CFC's or U.S. Bank's requirements; and,

**RESOLVED**, that it is the intent of the board of directors that upon execution and delivery of the Agreement to CFC, and when executed by CFC, the Agreement shall constitute a valid and binding agreement between CFC and the Cooperative, enforceable in accordance with its terms; and

**RESOLVED**, that the appropriate officers are authorized to take all other actions they deem advisable to carry out the purpose of these resolutions.

Motion seconded by Fetterman and carried.

Manager Stephens reported that Thiesing has been working on the 2011 budget. No rate increase is necessary so far and not many changes will be made from the 2010 budget. Stephens asked the board how they would like to review the proposed budget. After discussion, a budget workshop was set up for Thursday, December 9<sup>th</sup> at 10:00 a.m.

Thiesing updated the board on Empire's financials. Revenues are over budget – residential, large commercial and KM. Gross revenue is 20% over budget for current month. KWh usage is up for the month. Operating expenses are under budget so she is trying to shift some 2011 expenses to this year. Interest expense continues to be under budget. We have not had to draw from our line of credit because construction is down and we are using EEA crews instead of contract crews.

When asked about financials for FastTrack, Thiesing replied that they are ahead of cash projections and are better than they thought they would be on cash flow and have not had to use their line of credit.

Discussion was held regarding a rate cut if no rate increase is necessary. Thiesing replied that she didn't think that should happen and believes we may be able to stretch for a year, but with EPA and new regulations, we will be facing more expenses. She also said that revenues are high due to weather which you can't count on and the fact that staff has done a terrific job in holding expenses down all result in making financials look better. She suggested that the board may want to consider a larger capital credit refund rather than a rate decrease. Discussion followed regarding increasing the basic charge. Other Colorado systems have increased their fixed charges substantially.

**Action Item:** Manager Stephens directed the board to the Tri-State Load Forecast included in the written packet. After discussion, motion by McWilliams to accept Resolution 11-2010 as follows:

#### **RESOLUTION 11-2010**

WHEREAS, the 2010 Load Forecast prepared by Tri-State Generation and Transmission Association Staff and Empire Electric Staff for Empire Electric Association was presented and reviewed with the board of directors on November 19, 2010; and

WHEREAS, both Neal E. Stephens, General Manager of Empire Electric Association, Inc. and Glen Noble, Engineering Manager, has reviewed the 2010 Load Forecast and recommends its acceptance by the board.

NOW, THEREFORE BE IT RESOLVED, that the 2010 Load Forecast be accepted by the board of directors of Empire Electric as presented.

Motion seconded by Porter and carried.

**Action Item:** Member Services Manager Sparks presented a PowerPoint outlining the solar farm proposal. After discussion, motion by Lawrence to approve the solar farm for a cost of "not to exceed" \$50,000 with the bid going to Four Corners Solar. Motion seconded by Mollenkopf and carried. Discussion was held regarding having a contest for the solar farm name, and also giving the production

from one panel for one year as a prize at the annual meeting. This same panel can then be used each year for a prize which will serve to provide member education.

Sparks mentioned that the largest EC credit Empire has ever given will be announced with Montezuma County and they will be receiving over \$30,000. Tri-State is doing a big “mock up” check and press will be there. The county installed 37 heat pumps. Sparks will let the board know by email when this will take place if any of them wish to attend.

United Way pledge forms were passed around for the board if they want to participate.

Discussion was held regarding 4Core.

Stephens reported on his meeting with Joni Buckley of the Ute Mountain Ute Tribe. The Tribe is getting familiar with solar voltaic power projects to assess the feasibility of developing similar projects on tribal lands. He passed around literature the Tribe prepared regarding this.

Manager Stephens passed around a National Geographic Four Corners Area Geo-tourism document with guidelines on how to nominate what would go into that map within our area for economic development. He thought he might nominate Uravan and the hanging flume.

Manager Stephens discussed the fact that Empire has several old extensions that former members quit using and that Empire should consider a more aggressive position on retiring them. If we do not and we perform ordinary maintenance on lines producing zero revenue, other members are in effect subsidizing these extensions unnecessarily. It makes economic sense to retire them. Stephens and staff will develop an administrative policy on how this would work and present at next months meeting.

Fetterman asked about the accounts payable summary chart where it says that we paid \$338,000 to the County for the aerial imagery project. Stephens said that should be \$33,800 and is a typo.

#### Director Roundtable:

McWilliams indicated that it's time for directors to consider renewing their donations for CARE /ACRE. She distributed pamphlets.

Discussion was held regarding the class on rates that several members and Manager Stephens took at the Region VII meeting and the big push was to increase the fixed rate charge to eliminate subsidies. Manager Stephens said that this will tie into the rate discussion and hopes to obtain the CFC cost of service model in Jan or Feb to begin developing our next cost of service study before next summer.

#### Attorney:

Attorney Spear updated the board on the Wells, Wells, Wilkin case and the Woodrow case.

Spear is also working with Ehmke on purchase and sale agreement of the Pleasant View property for a substation. The landowners wanted to close on property to get money in hand but Empire has to receive county approval before Empire can purchase this property.

Attorney Spear reported that his firm reviewed the agreement regarding the CFC credit card program and had no problems with it. He also reported that he made a few changes in the SKANSKA contract after their attorney reviewed it.

They received a letter from James Preston which said that he is gearing up to file a complaint in district court against Tarr and will do so sometime after the first of December unless Empire wants to discuss settlement. Board consensus is that Empire will be responsible for Tarr's legal expenses as he was just performing his job in this case.

Tri-State:

Director Mollenkopf highlighted items from his written report, as well as the General Manager's and President's written reports under Tab K. He discussed the cap and trade in New Mexico and the Western Climate initiative.

Colorado Rural Electric Association:

Director Porter discussed the CREA sponsored energy summit prior to Region VII meeting. Several issues discussed in the "round robin" were: Grand Valley is about to finish their headquarters; probably will be seeing some feed-in tariff legislation; CREA doesn't plan to initiate any legislation; and a group from Colorado co-op council wants to be an associate member of CREA where they would not have a vote but would pay dues and the board authorized Kent to investigate further. In terms of budget, dues for Empire would increase \$7,000, and CREA is \$143,000 ahead of budget and is doing well.

Western United Electric Association:

McWilliams reported that the financials did not get in packet in time but that they are doing better this month. She reported on her concern of cash being down and that it had to do with patronage payout.

UREA:

Nothing to report

Fast Track

Discussed in executive session

Committee Reports:

1. Building committee - will talk with Nathan Barton on Monday, November 29<sup>th</sup> and everyone is welcome to attend.

**Adjournment:**

Meeting adjourned at 2:45 p.m.

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Bill Bauer, President

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James W. Lawrence, Secretary/Treasurer